Develop an Internal Due Diligence Process and Integration Strategy
For Hospital/Physician Mergers & Acquisitions
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What We Are Going to Talk About Today
• Background (BRIEF!!!)
• Compliance Due Diligence Overview/Process/TEAM
• Detailed Checklists, Attestation Forms and Interview process
• Compliance Integration Strategies

Keep integration activities front and center throughout the due Diligence Process
Our 21-State Diversified Network

- 1,7% of all babies in America are delivered at Trinity Health facilities
- 23,900 Affiliated Physicians
- 3,900 Employed Physicians

- 90 Hospitals* in 21 Regional Health Ministries**
- 4 Mission Health Ministries
- 3 National Health Ministries***
- 49 Home Care & Hospice Locations Serving 116 Counties
- 14 PACE Center Locations
- 61 Continuing Care Facilities

*Owned, managed or in JOAs or JVs.
**Operations are organized into Regional Health Ministries ("RHMs"), each an operating division which maintains a governing body with managerial oversight subject to authorities.
***Includes multiple locations for Trinity Home Health Services, Trinity Senior Living Communities and PACE facilities.

Current Hospital M&A Trends

- Post-Acute
- Physicians
- Clinics
- Health Plans
- Hospitals

By Frits Ahliefeldt
Types and Structure of Transactions

Provider Types
- Individual physicians and small group practices
- Large multi-specialty group practices
- ASCs, specialty hospitals, joint ventures
- Single community hospitals
- Large multi-hospital systems

Transaction Structure
- Merger/member substitution
- Asset purchase
- Stock/shares purchase

Other
- Who is leading transaction? System Office or Local?
- Size and type of transaction determines extent and formality of compliance involvement

Your Role in M&A Due Diligence

- Evaluate
  - Compliance Program / Culture
  - Regulatory Risks
  - Integration issues

“It takes 20 years to build a reputation and 5 minutes to ruin it.”
Warren Buffett, Berkshire-Hathaway
Stages in M&A transactions and Your Role

Stage I – Preliminary Due Diligence

Stage II – Due Diligence

Integration Planning

Closing Effective Date

Due Diligence

Coordination with Other Areas

Due Diligence

Compliance

Insurance and Risk

Accreditation / Quality

Information Systems

Tax

Legal

Finance

Human Resources / Benefits

Supply Chain

Real Estate

Technology
Stages in M&A transactions and Your Role

Stage I
- Pre-MOU/LOI
- Confidentiality
- Limited inquiries and information sharing
- Materiality threshold defined
- Objective: Identify “RED FLAGS”
  - Regulatory audits and investigations
  - Pending or planned voluntary disclosures
  - Settlement agreements
  - CIAs or other mandated compliance requirements

Stage II – Deep Dive, Getting into the Weeds
- Post MOU/LOI signing
- Pre Definitive Agreement
- Objectives: Fiduciary responsibilities, barriers, opportunities, integration planning

Integration Planning
- Post Definitive Agreement
- Day 1 closing goals
- Post-closing goals (e.g. 30 days – 1 year)
What’s next? Steps in your evaluation of the Compliance Program

• Information request/review
• Conduct Interview
• Assess Compliance Program / Evaluate the results (Attestation)

Compliance due diligence request list

• Compliance program information – background, history, structure, etc.
• Org. chart and position description(s) for CO and key staff
• Current code/standard of conduct
• DRA False Claims Act Information requirements
• Agendas and minutes for compliance/audit committee (3 years)
• Compliance reports to board of directors (3 years)
• Compliance policies and procedures, including privacy
• Summary of regulatory audits, investigations and settlements (DHHS-OIG, DOJ, OCR, other federal and state agencies, 3 years)
• Process for exclusions screening for employees, medical staff and vendors and results of screening
• PEPPER data for the most recent quarter

• Summary of any matters voluntarily disclosed to federal or state authorities and current status
• Summary of internally identified matters subject to potential disclosure and/or repayment to regulatory authorities and current status
• Correspondence from regulatory authorities citing potential violations of laws and regulations (3 years)
• CIAs or other mandated compliance program requirements (current and 3 years)
• Summary of hotline reports received (3 years)
• Internal or external audit reports performed in support of compliance program (3 years)
• Summary information on results of third-party payer audits, denials and appeals for major service lines (3 years, all payers)
• Example of compliance training and education systems, programs and materials
Interviewing the Compliance Officer: What to Ask?

• If possible review all documents provided before scheduling an interview

• Questions:
  o Can you give me a history of your compliance program and how it functions today?
    • How did it get started?
    • Who do you report to?
    • Describe the culture as it relates to compliance?
    • Do you report to the Board? How? When?
    • Tell me about your compliance resources? Fulltime? Shared?
    • Do you have an internal compliance committee? Who’s on it? Timing? Etc.

Interviewing the Compliance Officer: What to Ask?

  o Tell me about your Code/Standards of Conduct?
    • When was the last time is was updated?
    • How is it communicated to the employees?
    • Do you use supplemental codes/standards for medical staff, suppliers, etc.?
  o Provide an overview of your compliance education and training activities?
    • Do you use a learning management system (LMS)? If so, which one?
    • Describe other education you provide to senior leadership, board/audit committee, etc.?
  o Describe your risk assessment process?
    • Discuss high risk areas that you are currently facing?
    • How do you mitigate these risk areas?
Interviewing the Compliance Officer: What to Ask?

- Tell me a little about your auditing and monitoring activities?
  - Internal resources or external?
  - Any current audit findings that concern you, paybacks, ongoing issues, etc.?
- Provide an overview of your hotline reporting system and processes?
  - How is the hotline communicated to employees?
  - Do you use an outside vendor or an incident management system?
  - Describe usage/volumes?
- Describe your exclusion screening process?
  - Do you use a vendor?
  - Describe your remediation process for an excluded vendor?

Interviewing the Compliance Officer: What to Ask?

- Provide an overview of the your privacy program?
  - Describe the number and scope of complaints?
  - Any breaches reported to the OCR in the last 12 months?
- Describe the conflict of interest policies/procedures and processes at your entity?
- Describe any activities pertaining to CIAs, CCAs, DOJ, OIG, FDA, etc. that have occurred in the last six years?
What about claims auditing????

• 60 day repayment rule
• RACs, MACs, CERT etc. (routine audits)
• Value – What are you going to find???
• Bigger risk areas to focus on
• Appetite for Risk???
• Reasons for a claims audit
Documenting the Results of Your Review using an Attestation Form

- See Sample Form
- Scope of review
- Overall conclusion/summary of findings
- Significant issues of potential obstacles
- Major integration task for day 1, day 30, etc.
- Matters that will represent significant post-merger work to integrate
- Saving opportunities

Common Issues discovered through the Compliance Due Diligence Review

- Compliance Officer Due / Structure
  - Full-time / part-time
  - Reporting relationship
  - Dedicated staff

- On-going Regulatory Audits / Investigations
  - Federal / State
  - Newly issued
  - Results / Liability

- Issues / Concerns Compliance Program
  - Annual / Monthly sanction screening
  - Compliance Committee (i.e. relationships with other depts.)
  - Risk Assessment / Auditing monitoring process
  - Effective reporting systems (e.g. hotline)
  - Etc. etc. etc.
INTEGRATION - YOU WILL BE ASSIMILATED

WE ARE THE BORG. LOWER YOUR SHIELDS AND SURRENDER YOUR SHIPS.

WE WILL ADD YOUR BIOLOGICAL AND TECHNOLOGICAL DISTINCTIVENESS TO OUR OWN. YOUR CULTURE WILL ADAPT TO SERVICE US. RESISTANCE IS FUTILE.

Whew!!! On to Integration..............................

• Major integration tasks from due diligence review
• Follow the eight elements of an effective compliance program
  1. Leadership & Oversight
  2. Standards/code of conduct
  3. Education & Training
  4. Risk assessment
  5. Auditing & Monitoring
  6. Reporting Systems
  7. Response & Prevention
  8. Enforcement & Discipline
• Timing/on-boarding process/team
Example First Steps in the Integration Process

- Did you keep Integration activities front and center???
- On-site visit – Orientation
  - Introductions – Discuss System Compliance Office
  - Leadership Oversight
    - Overview of Roles & Responsibilities
    - Quarterly Reporting to System Office
    - Internal Compliance Committees
    - Governance Oversight

Example First Steps in the Integration Process

- Code of Conduct / Policies & Procedures
  - System Code of Conduct – Discuss rollout/communications timeframes
  - Discuss System Policies
- Reporting Issues and Concerns
  - System Hot Line – Discuss rollout/communication timeframe
  - System Exclusion Screening
  - Regulatory communication process – e.g. CMS Regulatory bulletins and transmittals impacting revenue cycle operations
Example First Steps in the Integration Process

- **Risk Assessment / Monitoring and Auditing**
  - System Risk Assessment Process
  - Hospital Internal Workplan template
  - Current auditing and monitoring activities in process
  - Stub period potential audit projects

- **Education and Training**
  - Discuss current learning management system and the migration to System LMS
  - Online education modules (e.g. New hire orientation, annual training)
  - Education matrix – example recommendations for new hires, current employees, physician and other roles

Example First Steps in the Integration Process

- **New Regulated Programs**
  - MSSP ACO compliance programs
  - Next-Gen ACOs
  - Bundled Payments for Care Improvement (BPCI)

- **On-going investigations**
  - System Office support
  - Corrective action

- **We use a tracking software for all integration activity**

Remember Don’t Be The BORG!!!
What we have learned over the years and Challenges encountered

• Use of consultants
• Data review
• Claims review
• Indemnification escrows
• Financial relationships with physicians (Stark compliance)
• Transition support to divested organizations

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